EXHIBIT C

U.S. Department of Justice

Tax Division

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February 22, 2008

VIA FACSIMILE

The Honorable Dana M. Sabraw
U.S. District Court
Southern District of California
940 Front Street
San Diego, CA 92101-8900

Re: Rodney M. Toothacre v. United States of America
Case No. 07-cv-2289-DMS-WMC

Dear Judge Sabraw:

This letter is being sent pursuant to Rule 6(a) of the Civil Pretrial & Trial Procedures. For the reasons that follow, the United States desires to file a motion to dismiss the Complaint in the above-referenced matter for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted pursuant to Rules 12(b)(1) and 12(b)(6), respectively.

Mr. Toothacre's Complaint concerns federal tax liens filed by the Internal Revenue Service ("IRS") for his employment tax liabilities for the fourth quarter of 1991 and the first quarter of 1992 and his income tax liabilities for the tax years 1993 and 1994. The Complaint seeks a temporary restraining order ("TRO") under 26 U.S.C. § 6331(i) to remove these federal tax liens and prays for damages under 26 U.S.C. §§ 7432, 7433.

Mr. Toothacre's claim for a TRO is barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a), which "withdraw[s] jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes." Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 5 (1962). Mr. Toothacre's purported basis for jurisdiction for this claim does not apply in this case because Mr. Toothacre does not have a refund suit pending in federal court. See 26 U.S.C. § 6331(i) (conferring jurisdiction to enjoin IRS collection activities where a taxpayer has a refund suit pending in federal court). Because Mr. Toothacre has not identified an express and unequivocal waiver of sovereign immunity for his claim for a TRO, this Court lacks jurisdiction over this claim and should dismiss it pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

This Court lacks jurisdiction over Mr. Toothacre's claim for damages under 26 U.S.C. § 7433 because Mr. Toothacre failed to exhaust his administrative remedies. Treasury Regulation

§ 301.7433-1(d) requires the taxpayer to submit an administrative claim to the IRS prior to bringing an action in federal district court. Mr. Toothacre failed to do so. Therefore, this Court lacks subject matter jurisdiction over this claim and should dismiss it pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

With respect to his claim for damages under 26 U.S.C. § 7432, Mr. Toothacre did submit an administrative claim to the IRS. However, it lacked the specificity required by Treasury Regulation § 301.7432-1(f)(2)(v) because it failed to provide a description of the injuries suffered. Because the failure to comply with the regulations deprives a court of jurisdiction even where the IRS has received actual notice of the claim, see Venen v. United States, 38 F.3d 100, 103 (3d Cir. 1994); Amwest Surety Ins. Co. v. United States, 28 F.3d 690, 696 (7th Cir.1994), this Court should dismiss this claim pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

Alternatively, even if Mr. Toothacre had exhausted his administrative remedies for his claim for damages under 26 U.S.C. § 7432, the Complaint nonetheless fails to state a claim upon which relief can be granted. Under this provision, damages are limited to the "actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained." 26 U.S.C. § 7432. Further, "[i]njuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages." Treasury Regulation § 301-7433-1(c)(1). Although the Complaint alleges that the IRS caused Mr. Toothacre "immense problems" and prays for $100,000.00 in damages, it does not allege how the actions of the IRS were the proximate cause of these damages, the nature of the immense problems, or how the $100,000.00 figure was derived. Because the allegations in the Complaint do not demonstrate that Mr. Toothacre has suffered "actual, direct economic damages" recoverable under § 7432, this Court should dismiss this claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.[1]

For the foregoing reasons, the United States believes that a Motion to Dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure is warranted. The United States has conferred with Mr. Toothacre regarding its position and believes there is potential to negotiate a stipulation of dismissal of the claim for a TRO in light of the fact that the IRS extinguished the 1991 and 1992 tax liabilities and has released the tax liens for the 1993 and 1994 liabilities.

An informal conference on this matter is scheduled for 8:30 a.m., Tuesday, February 26, 2008. A copy of this memorandum is being sent to Mr. Toothacre via email, as per his request.

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[1]Currently pending in Tax Court is Mr. Toothacre's Collection Due Process appeal in which he challenges the underlying validity of the 1993 and 1994 income tax liabilities. The outcome of the Tax Court proceedings may have an effect on the present matter because in order for Mr. Toothacre to succeed on the merits of his claim for damages under 26 U.S.C. § 7432, he must demonstrate that liability for those tax years is "unenforceable." See 26 U.S.C. § 6325.

Sincerely yours,

CAROLINE A. NEWMAN
Trial Attorney
Civil Trial Section, Western Region

cc: Rodney M. Toothacre (via email)

United States Attorney
San Diego, California